

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

CR 19-40019

Plaintiff,

FACTUAL BASIS STATEMENT

vs.

SON VAN HO,  
a/k/a Duong Maluong,

Defendant.

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The Defendant states that the following facts are true, and the parties agree that they establish a factual basis for the offenses to which the Defendant is pleading guilty pursuant to Fed. R. Crim. P. 11(b)(3):

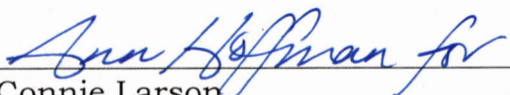
Between approximately January 29-30, 2019, the Defendant, Son Van Ho, a/k/a Duong Maluong, was in Sioux Falls, South Dakota, and the surrounding area. The Defendant was staying in a hotel room he had rented with a counterfeit credit card containing a credit card number belonging to Victim #2, with a card number ending in 6753, which the Defendant was aware he was not authorized to use. The Defendant utilized the hotel's credit card systems, which affect interstate commerce based on their connection to the internet for the transactions. The Defendant did so with intent to defraud, and obtain the lodging to which he was not entitled, as well as to utilize the funds accessible with the card, which did not belong to him. A credit card number is a "means of identification" of another person, and a counterfeit credit card is a

“counterfeit access device.” The credit card number belonged to an actual person, and the Defendant was aware that the account number on the card in his possession belonged to another actual individual.

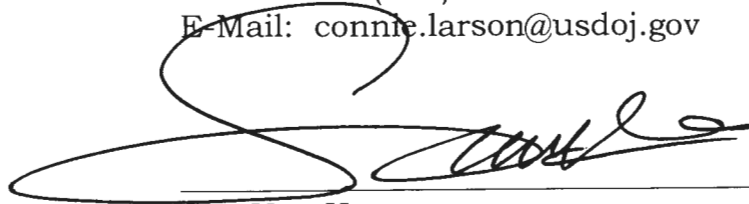
On January 30, 2019, when the Defendant was arrested, he knowingly had 40 fraudulent credit cards in his possession, as well as a laptop computer and card reader/writer, which would have allowed him to make additional credit cards. The Defendant described to law enforcement a process by which he purchased stolen credit card numbers from a darknet vendor for his use in the scheme, and showed them how the laptop and card reader/writer made that possible.

RONALD A. PARSONS, JR.  
United States Attorney

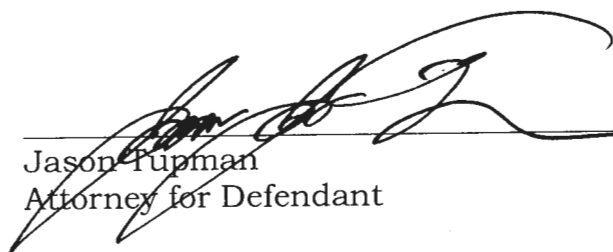
6/19/19  
Date

  
Connie Larson  
Assistant United States Attorney  
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6/18/19  
Date

  
Son Van Ho  
Defendant

6/15/19  
Date

  
Jason Pupman  
Attorney for Defendant

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

CR 19-40019

Plaintiff,

PLEA AGREEMENT

vs.

SON VAN HO,  
a/k/a Duong Maluong.

Defendant.

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The Defendant, the Defendant's attorney, and the United States Attorney for the District of South Dakota hereby submit the following Plea Agreement to the United States District Court, which Agreement was reached pursuant to discussions between the United States Attorney and the Defendant's attorney. The Agreement is as follows:

**A. ACKNOWLEDGMENT AND WAIVER OF RIGHTS AND UNDERSTANDING OF MAXIMUM PENALTIES:** The Defendant agrees that he has been fully advised of his statutory and constitutional rights herein, and that he has been informed of the charges and allegations against him and the penalty therefor, and that he understands same. The Defendant further agrees that he understands that by entering a plea of guilty as set forth hereafter, he will be waiving certain statutory and constitutional rights to which he is otherwise entitled.

**B. PLEA AGREEMENT PROCEDURE:** The United States and the Defendant agree that this Plea Agreement is presented to the Court pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure, which authorizes the United States to agree that it will not bring, or will move to dismiss, other charges. The Court may accept this agreement, reject it, or defer a decision until the Court has reviewed the presentence report.

**C. PLEA OF GUILTY TO CHARGE AND DISMISSAL OF OTHER CHARGE:** The Defendant will plead guilty to Count 1 of the Indictment filed in this case, which charges the violation of 18 U.S.C. § 1029(a)(3) and (c)(1)(A)(i). The charge carries a maximum sentence of 10 years in prison, a \$250,000 fine, or both, and a period of supervised release of 3 years. If the Defendant is found by a preponderance of evidence to have violated a condition of supervised release, he may be incarcerated for an additional term of up to 2 years on any such revocation. There is a \$100 assessment to the victims' assistance fund. Restitution may also be ordered.

The Defendant will also plead guilty to Count 5 of the Indictment filed in this case, which charges the violation of 18 U.S.C. § 1028A(a)(1). The charge carries a mandatory minimum and maximum sentence of 2 years in prison, which must be imposed consecutively with any other term of imprisonment imposed, as well as a \$250,000 fine, or both, and a period of supervised release of 1 year. If the Defendant is found by a preponderance of evidence to have violated a condition of supervised release, he may be incarcerated for an additional term of up to 2 years on any such revocation. There is a \$100 assessment to the victims' assistance fund. Restitution may also be ordered.

Upon acceptance of the plea by the Court and the imposition of sentence, this section shall be treated as a motion to dismiss the remaining counts in the Indictment as they pertain to the Defendant pursuant to the terms of this Plea Agreement.

**D. VIOLATION OF TERMS AND CONDITIONS:** The Defendant acknowledges and understands that if he violates the terms of this Plea Agreement, engages in any further criminal activity, or fails to appear for sentencing, this Plea Agreement shall become voidable at the discretion of the United States and the Defendant will face the following consequences:

(1) All testimony and other information the Defendant has provided at any time to attorneys, employees, or law enforcement officers of the United States, to the Court, or to the federal grand jury may and will be used against him in any prosecution or proceeding.

(2) The United States will be entitled to reinstate previously dismissed charges and/or pursue additional charges against the Defendant, and to use any information obtained directly or indirectly from him in those additional prosecutions.

(3) The United States will be released from any obligations, agreements, or restrictions imposed upon it under this Plea Agreement.

**E. ACCEPTANCE OF RESPONSIBILITY:** The United States agrees that based upon the information known to it at this time, the Defendant is entitled to a two-level decrease in his offense level pursuant to U.S.S.G. § 3E1.1(a), provided no evidence is disclosed in the presentence report which indicates the Defendant has not demonstrated a recognition and affirmative

acceptance of personal responsibility for his criminal conduct, and further provided he: (1) complies with the terms of this Plea Agreement; (2) testifies truthfully during the change of plea hearing; (3) participates truthfully with the Probation Office in the presentence investigation; (4) does not violate any conditions of pretrial detention or release after he signs this agreement; and (5) continues to exhibit conduct consistent with acceptance of responsibility. Both the United States and the Defendant otherwise reserve the right to present evidence and make argument regarding sentencing.

**F. GOVERNMENT'S RECOMMENDATION REGARDING SENTENCE**

**- ANY SENTENCE WITHIN STATUTORY LIMITS:** At the sentencing hearing, both the United States and the Defendant are free to recommend whatever sentence each feels is appropriate, within statutory limits, present evidence, and make arguments in support thereof. The Defendant understands that any recommendation made by him or the United States is not binding on the Court. The Defendant further understands that he may not withdraw his plea of guilty if the Court rejects any recommendation.

**G. SPECIAL ASSESSMENT:** The Defendant agrees to remit to the U.S. Clerk of Court, 400 S. Phillips Ave., Sioux Falls, SD 57104, no later than two weeks prior to sentencing, a certified or cashier's check payable to the "U.S. Clerk of Court" in the amount of \$200, in full satisfaction of the statutory costs pursuant to 18 U.S.C. § 3013.

**H. RESTITUTION - AGREEMENT TO PAY:** Pursuant to 18 U.S.C. §§ 3663 and 3663A, the Defendant hereby agrees to pay restitution in an amount to be determined by the Court. Defendant agrees that the amount of



restitution is not restricted to the amount alleged in the count to which the Defendant is pleading guilty and may include losses arising from charges not prosecuted as well as other relevant conduct associated with the Defendant's criminal conduct. The parties specifically agree that the Court has the authority to enter this order of restitution because it has been "agreed to by the parties in a plea agreement," pursuant to 18 U.S.C. § 3663(a)(3).

**I. MONETARY OBLIGATIONS - DEFENDANT'S ONGOING DUTY:**

The Defendant agrees, if requested by the United States, to promptly return an executed Authorization to Release Financial Records and Documents, an executed Authorization to Release Tax Returns and Attachments, current earnings statements, copies of his W-2s and an executed Financial Statement. The Defendant understands that this is an ongoing duty which begins upon execution of this plea agreement and continues until such time as payment of any financial obligation is remitted in full.

The Defendant agrees to assist the United States in identifying, locating, returning, and transferring assets for use in payment of any financial obligations imposed as part of the sentence in this case. The Defendant expressly authorizes the United States Attorney's Office to obtain credit reports on him prior to judgment.

The Defendant also agrees that if he is incarcerated, he will participate in the Bureau of Prisons' Inmate Financial Responsibility Program during any period of incarceration in order to pay any financial obligations ordered by the Court. The Defendant's agreement to participate in the Inmate Financial Responsibility Program does not limit the United States' right to pursue

collection from other available sources. If there is no period of incarceration ordered, the Defendant agrees that payment of any financial obligations ordered by the Court shall be a condition of probation.

**J. RESERVING THE RIGHT TO REBUT OR CLARIFY MITIGATION INFORMATION:** The United States reserves the right to rebut or clarify matters set forth in the presentence investigation report, or raised by the Defendant in mitigation of his sentence, with evidence and argument.

**K. BASIS FOR PLEA OF GUILTY:** The Defendant agrees that the statement of facts, signed by the parties and incorporated herein by this reference, provides the basis for his guilty plea in this case, and is a true and accurate statement of his actions or omissions with regard to the charges to which he is entering a plea, and that the Court may rely thereon in determining the basis for his plea of guilty as provided for in this Plea Agreement.

**L. WAIVER OF SPEEDY TRIAL:** The Defendant agrees to waive any rights to a speedy trial under either the United States constitution or the Speedy Trial Act. This waiver is necessary so that the Court will have the benefit of all relevant information at sentencing.

**M. PARTIES BOUND:** It is further understood and agreed that this agreement is limited to the United States Attorney's Office for the District of South Dakota, and that this agreement cannot and does not bind other federal, state, or local prosecuting authorities.

**N. SCOPE OF AGREEMENT:** This agreement shall include any attachments, exhibits or supplements designated by the parties. It is further understood and agreed that no additional promises, agreements, or conditions



have been entered into other than those set forth in this agreement, and this agreement supersedes any earlier or other understanding or agreement.

**O. WAIVER OF DEFENSES AND APPEAL RIGHTS:** The Defendant hereby waives all defenses and his right to appeal any non-jurisdictional issues. The parties agree that excluded from this waiver is the Defendant's right to appeal any decision by the Court to depart upward pursuant to the sentencing guidelines as well as the length of his sentence for a determination of its substantive reasonableness should the Court impose an upward departure or an upward variance pursuant to 18 U.S.C. § 3553(a).

**SUPPLEMENT TO PLEA AGREEMENT**

The United States will file a Supplement to Plea Agreement, which is required to be filed in every case in compliance with the Court's Standing Order.

RONALD A. PARSONS, JR.  
United States Attorney

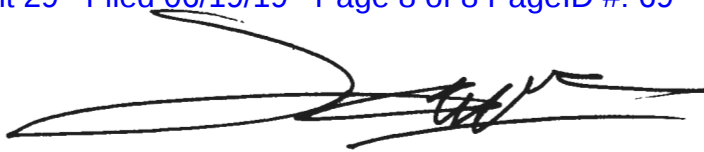
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Date

Connie Larson for  
Connie Larson  
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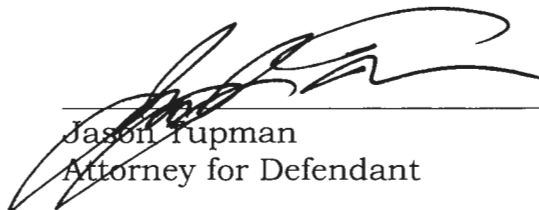
APPROVED:  
RONALD A. PARSONS, JR.  
United States Attorney  
By:

Dennis R. Holmes  
DENNIS R. HOLMES  
Chief, Criminal Division

6/15/19  
Date

  
\_\_\_\_\_  
Son Van Ho  
Defendant

6/15/19  
Date

  
\_\_\_\_\_  
Jason Tupman  
Attorney for Defendant

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

CR 19-40019

Plaintiff,

RESTITUTION AGREEMENT

vs.

SON VAN HO,  
a/k/a Duong Maluong.

Defendant.

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The Defendant, the Defendant's attorney, and the United States Attorney for the District of South Dakota hereby submit the following Restitution Agreement to the United States District Court, which Agreement was reached pursuant to discussions between the United States Attorney and the Defendant's attorney. The Agreement is as follows:

**RESTITUTION - AGREEMENT TO PAY:** Pursuant to 18 U.S.C. §§ 3663 and 3663A, the Defendant hereby agrees to pay restitution in an amount to be determined by the Court. Defendant agrees that the amount of restitution is not restricted to the amount alleged in the count to which the Defendant is pleading guilty and may include losses arising from charges not prosecuted as well as other relevant conduct associated with the Defendant's criminal conduct. The defendant acknowledges this restitution amount includes, at a minimum, restitution to the following entities in the following amounts:

Lewis Drug Store (Sioux Falls - South Louise)

\$441.56

Lewis Drug Store (Brookings)

\$731.09

Lewis Drug Store (Madison)


\$1,642.60

Hilton Garden Inn (5300 S. Grand Circle, Sioux Falls) \$572.32

The parties specifically agree that the Court has the authority to enter this order of restitution because it has been "agreed to by the parties in a plea agreement," pursuant to 18 U.S.C. § 3663(a)(3).

RONALD A. PARSONS, JR.  
United States Attorney

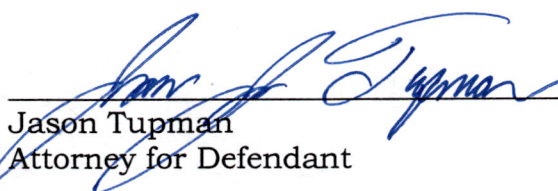
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9/23/2019  
Date

  
Son Van Ho  
Defendant

9/23/2019  
Date

  
Jason Tupman  
Attorney for Defendant